

Letter 6 – Wetland Violation

DATE

Mr./Ms.
Any Street
Any Town, FL 30000

Dear :

We have just completed a preliminary wetland determination on the following tract(s): . The Food Security Act of 1985, as amended, requires that we provide you with a “certified” wetland determination that meets current NRCS standards as per the regulations at 7 CFR 12.30(c).

The enclosed aerial photo and NRCS-CPA-026E form “Highly Erodible Land and Wetland Conservation Determination” identify wetlands that have been determined to be present. **As of the date of this letter, I have made a preliminary determination that a wetland(s) has been converted on [tract and field number(s)] in violation of the Food Security Act. A converted wetland is a wetland that has been drained, excavated, filled, cleared, or otherwise manipulated for the purpose of or to have the effect of making possible the production of an agricultural commodity.** The converted wetland(s) is labeled in Section II of the enclosed form NRCS-CPA-026E as “CW (+ yr)” and identified on the enclosed aerial photo. The Food Security Act of 1985, as amended, requires any person who applies for and/or receives certain USDA program benefits to comply with the Wetland Conservation Provisions of the Act as set forth in 16 U.S.C. Sections 3801, 3821-3824. **Conversion of a wetland may make you ineligible to receive USDA program benefits.**

The paragraph checked below applies to this converted wetland:

- ☐ The converted wetland may be eligible for a *[name of exemption, e.g., CWNA, MW, etc.]* Exemption from Food Security Act regulations. Please contact me to apply for this exemption, which if granted will restore your compliance with the Food Security Act and your eligibility for USDA program benefits.
- ☐ The loss of this wetland must be compensated by restoring it or by restoring, creating or enhancing a wetland of the same type elsewhere on the tract or in the watershed that is approved by NRCS. Please contact me to discuss development of a written plan to accomplish this task. Once the actions stated in the plan are completed, your compliance with the Food Security Act and eligibility for USDA program benefits will be restored.
- ☐ The wetland conversion has also been determined to be a potential violation of the Clean Water Act, administered by the US Army Corps of Engineers. If the Corps of Engineers determines that a violation of the Clean Water Act has occurred, once you have regained compliance with the Clean Water Act, your compliance with the Food Security Act and your eligibility for USDA program benefits will be restored upon request. In accordance with federal law, I am providing your contact information to the *[location]* Regulatory Office of the Corps of Engineers so that they may resolve the matter with you. You may also contact them at *[phone or email address]*.

Upon being certified, this wetland determination will be valid for USDA program purposes until the converted wetland area labeled “CW (+yr)” qualifies for another labeled designation (see the list of label codes on form NRCS-CPA-026E enclosed). If you do not contact me to pursue resolution of this potential wetland violation, the determination remains valid as long as the area remains in agricultural use. NRCS wetland determinations are valid for Clean Water Act regulation purposes for only five years from the date of certification.

[CHOOSE ONE OF THE NEXT TWO PARAGRAPHS:]

In addition to wetlands, “Other waters of the United States” may exist on this property. “Other waters” include tidal waters, lakes, natural ponds, rivers, mudflats, and intermittent and perennial streams which are regulated under the Clean Water Act. Areas labeled “NI” (Not Inventoried) on this determination may contain “other waters.” Before altering these areas, Contact the Corps of Engineers regarding the potential need for a permit.

OR

On this wetland determination “other waters of the United States” besides wetlands are identified. “Other waters” are regulated by the Clean Water Act and include tidal waters, lakes, natural ponds, rivers, mudflats, and intermittent and perennial streams. The Corps of Engineers has labeled them on this determination as “OW.” Contact the Corps of Engineers regarding the potential need for a permit if you plan to alter, or have altered, these areas.

Boundaries of labeled areas shown on this determination are approximate. **Contact the *[field office name]* Regulatory Office of the US Army Corps of Engineers and the *[insert name of]* Water Management District to find out if a Clean Water Act permit and/or state permit, respectively, are required prior to conducting any further activities on your property such as:**

- land clearing
- drainage (open ditching or subsurface drainage)
- drainage maintenance
- filling or land leveling
- excavation or dredging
- any activity involving “other waters of the United States”

You may reach the Corps of Engineers at *[name/phone number of local Corps staff]* or refer to the Corps’s website at http://www.saj.usace.army.mil/permit/offices/geographic_alignment.htm for further information. You may reach the *[insert name of]* Water Management District at *[name/phone number of local WMD wetland permitting staff]* or refer to the District’s website at <http://www.>_____.

In accordance with federal law set forth at 7 U.S.C. 6991, *et seq.*, and NRCS regulations as contained at 7 CFR 614, the following information is provided to you should you wish to appeal this preliminary wetland determination:

This preliminary technical determination will become final and certified 30 days from the date that you received this notification unless you request either of the following options in writing from our office:

- A field visit for reconsideration to review with you the basis for our determination and to gather any additional information from you concerning this preliminary technical determination.
- Mediation from the Florida Agricultural Mediation Service (toll free ph: 1-888-712-9421). Mediation is an informal and confidential process in which a trained, impartial facilitator helps the involved parties determine if a solution to a problem can be agreed upon. Mediation is also helpful in fully explaining the basis for the determination as well as providing you with a non-threatening arena for you to present any additional information that should be considered in making the technical determination.

If a field visit or mediation is requested, a **final technical determination** will be issued within 30 days after the field visit or completion of mediation. If you do not agree with the final technical determination, you will have 30 days from the date you receive the final technical determination to file an appeal with the USDA Farm Service Agency. Any request for appeal must be in writing and should state the reason for your appeal request as well as furnishing factual information as to why you believe the determination is in error. All appeal-related correspondence must be sent to:

FSA *[DC: enter County name]* County Committee
ADDRESS
CITY, FL [zip]
ph: _____

We will forward a copy of your administrative record to the FSA County Committee for use in the appeal. Once final, the HEL determination will be listed as such on FSA and NRCS records. FSA will provide you with any further rights to review and/or appeal.

If you are the owner of this tract and have a tenant, I urge you to discuss this letter and the enclosed wetland determination with your tenant. Likewise, if you are the tenant of this tract of land, I urge you to discuss this information with your landlord.

Sincerely,

(DC's NAME)
District Conservationist

Cc: *(FSA CED's Name)*, County Executive Director, FSA
[landlord/tenant if applicable]

Enclosures: 1. Form NRCS-CPA-026E and Aerial Photo Map
 2. Florida Agricultural Mediation Service brochure
 3. Factsheet: "*Why Florida's Wetlands are Important*"
 4. Factsheet: "*What Farmers Want to Know...*"